

REMARKS

The present communication is in response to the Official Action mailed December 7, 2007. In that Action, the Examiner rejected claims 1, 4-10, 20, 21, 23, 26, 29, and 30 (each of the currently pending claims) under 35 U.S.C. § 103(a) as being obvious over the combination of U.S. Patent No. 6,855,166 to Kohrs *et al.* ("Kohrs") and U.S. Patent No. 6,607,558 to Kuras ("Kuras").

These rejections were set forth subsequent to an Amendment of September 26, 2007 in which Applicants submitted amendments and arguments in order to overcome previous anticipatory rejections of the claims solely in view of Kohrs. In short, Applicants added the limitations that the upper and lower surfaces of the intervertebral spacer device be convexly curved along both a plane extending between the leading and trailing ends and a plane extending between the first and second sides. In the present action, the Examiner admits that the Kohrs reference does not teach such a limitation. However, the Examiner has cited Kuras as teaching precisely what Kohrs does not, and simply noted that one of ordinary skill in the art at the time of the present invention would have combined the teachings of the Kohrs and Kuras references in order to arrive at the present invention. Applicants respectfully disagree with the Examiner's contentions.

First, Applicants respectfully submit that the Examiner's indication that Kohrs and Kuras reside "in a similar art," is a somewhat overbroad. Where the Kohrs reference does in fact relate to a fusion device similar to that of the present invention, Kuras discloses an artificial disc that is meant to replicate the operation of a spinal disc when implanted between two adjacent vertebrae. While the two references are indeed within the spinal area, fusion devices and articulable devices are very different from one another. As such, Applicants

respectfully submit that one of ordinary skill in the art would not have necessarily looked to the Kuras reference in order to modify Kohrs in accordance with what is claimed in the currently pending claims.

Second, Applicants respectfully point out that the aim of the Kohrs teaching was to create an intervertebral fusion implant with a reduced contact area. As explained in Kohrs, this reduced contact area allows the fusion device taught therein to be implanted between adjacent vertebrae (most likely within a channel or other area formed during the surgical procedure) with a minimal amount of the implant itself contacting the adjacent vertebral bodies. This allows for better bone growth to occur between the adjacent vertebral bodies and the overall stability of the fusion to therefore be improved. On the other hand, Kuras looks to replicate the removed spinal disc through artificial means. Very little (if any) preparation of the vertebral bodies is required prior to implanting the device, and bone growth between the adjacent vertebrae is not desired given the intention of the implant to allow the movement of the vertebra with respect to one another. The multiple convex surfaces of the end plates of the implant taught in Kuras are meant to aid in the retainment of the device between the adjacent vertebral bodies. In fact, their shape is meant to allow for the most contact area to be had between the implant and those vertebral bodies. This would be contrary to the teachings of Kohrs. Thus, this illustrates another reason why one of ordinary skill in the art would not have looked to Kuras in order to modify Kohrs in order to arrive at the present invention.

In light of the above, Applicants respectfully submit that the Examiner's combination of the Kohrs and Kuras references is improper, in that the two references are non-analogous. Thus, Applicants respectfully submit that the

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rejections of the currently pending claims are also improper. As such, Applicants respectfully request allowance of each and every one of the currently pending claims.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: March 7, 2008

Respectfully submitted,

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